

**SOAH DOCKET NO. 582-12-5353**  
**TCEQ DOCKET NO. 2011-1647-PWS-E**

<b>EXECUTIVE DIRECTOR OF THE</b>	§	<b>BEFORE THE</b>
<b>TEXAS COMMISSION ON</b>	§	
<b>ENVIRONMENTAL QUALITY,</b>	§	
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	<b>STATE OFFICE OF</b>
	§	
<b>SOUTH TEXAS WATER AUTHORITY,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**RESPONSE TO THE PROPOSAL FOR DECISION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW South Texas Water Authority (the “Authority”) and files this its Brief in the above cause.

**I**  
**THE AUTHORITY IS NOT A PWS**

The Authority agrees that the PFD correctly interprets the plain meaning of the definition of a public water supply system, i.e., that a system is only a public water system if it has “. . . at least 15 service connections or serve[s] at least 25 individuals at least 60 days out of the year.”

The Authority does except to that part of the proposal for decision which states:

“As an initial matter, the ALJ stresses that the determination of whether STWA is a public water system is, in this case, solely a legal determination. As such, the Commission has the final authority to make such a determination, particularly because the determination hinges upon the Commission’s interpretation of its own rules. Put bluntly, while the ALJ is presenting a recommendation, the Commission may decide this issue either way.”

The Authority agrees that the determination of whether it is a public water system is solely

a legal determination. This does not mean that the Commission has the authority to say that its rules mean anything that the Commission wants them say. Interpretation of any rule has to be based on the plain meaning of the wording of the rule.

A rule or regulation of an administrative agency that provides financial penalties must give "fair warning of the nature of the proscribed conduct." "When persons of common intelligence are compelled to guess at a law's meaning and applicability, due process is violated and the law is invalid." (*City of Webster v. Signad, Inc.*, 682 S.W. 2d 644, Tex. App. 1<sup>st</sup> Dist. 1984). No common person of ordinary intelligence could imagine that the Authority could be "serving" customers of the City of Kingsville, or any other retail customers served by the Authority's wholesale customers.

WHEREFORE, PREMISES CONSIDERED, the Authority requests that the Proposal for Decision's conclusion that the Authority is not a public water system be adopted, and for such other orders and relief to which it may be entitled.

Respectfully submitted,

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ATTORNEYS FOR SOUTH TEXAS WATER  
AUTHORITY

## CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2013, the foregoing document was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day, the foregoing document was served as indicated:

The Honorable Administrative Law Judge Craig R. Bennett  
State Office of Administrative Hearing  
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Austin, Texas 78701-1649

**Via Facsimile to: (512) 322-2061 (SOAH Docketing)**

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